



December 28, 1999

Ms. Cathy L. Hendricks
Executive Director
Texas Board of Architectural Examiners
333 Guadalupe, Suite 2-350
P.O. Box 12337
Austin, Texas 78711-2337

OR99-3782

Dear Ms. Hendricks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130842.

The Texas Board of Architectural Examiners (the “board”) received a request for a copy of all documents obtained by the Board pertaining to its investigation of a disciplinary matter, and the notarized complaint that is the basis of disciplinary action in regard to this matter. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed a representative sample of the documents at issue.²

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, “no later than the 15th business day after the date of receiving the written request,” must submit to the attorney general

¹While you initially raised section 552.111 as well as section 552.103, you only submitted an argument supporting your claim that the requested documents are excepted under section 552.103.

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(B) a copy of the written request for information; [and]

...

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested. . . .

Gov't Code § 552.301(e)(1). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You state that the board received the request for information on October 11, 1999. Accordingly, you were required to send this office a copy of the requested information no later than November 1, 1999. However, you delivered your arguments for withholding the information, a copy of the written request for information, and a representative sample of the requested documents to our office on November 5, 1999. Therefore, absent a compelling reason to withhold the information, the requested records must be released. *See* Open Records Decision No. 150 at 2 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). You argue that the requested documents are excepted under section 552.103 of the Government Code because the documents pertain to anticipated litigation. While section 552.103 may except such records from required public disclosure, it is not a confidentiality provision. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Moreover, you have not argued that the requested records raise the interests of any third parties. Therefore, you have not shown a compelling reason to withhold the documents. As we do not find that a compelling reason exists, the board must release the requested documents to the requestor to the extent that they do not contain confidential information. *See* Open Records Decision No. 150 (1977).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/ch

Ref: ID# 130842

Encl. Submitted documents

cc: Mr. Edwin M. Smith
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(w/o enclosures)